

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Chong Hao Su,

Plaintiff,

v.

Case No. 1:07cv592

Paula Y. Boggs, et al.,

Judge Michael R. Barrett

Defendant.

ORDER

This matter is before the Court on the Report and Recommendation of Magistrate Judge Hogan as to Defendants' Motion to Dismiss (Doc. 10). Also pending before this Court are the following motions, all filed by Plaintiff: Motion to Remove Criminal Cases to this Court (Doc. 5), Motion for Summary Judgment (Doc. 12), Motion to Quash Criminal Charges (Doc. 15), Motion to Sentence Case (Doc. 16), Motion to Dismiss the Warrant of the Rarest for the Removal from Cincinnati Court (Doc. 18), Motion for Removal of my Criminal Charges Cases as Follows Law and Grounds (Doc. 19), Motion of Removal of my Criminal Charges to the Federal Court and to Pay Bond Money (Doc. 20), "N"th time Motion for the Removal in U.S. Court (Doc. 21), Motion for Miscellaneous Relief (Doc. 22), Motion to Confirm U.S. Court Accept my Case Removal in U.S. Court (Doc. 23), Motion to Stop Plaintiff from having to Apply for a Vacant Building Certification and Request for Extension to Reply to Defendants Motion (Doc. 24), Motion for Protective Order and Motion for Removal of Cases (Doc. 25), Motion for Order to Cease Serving Communications Directly on Defendants (Doc. 26), Motion for Extension of Time to File Response/Reply (Doc. 28), Motion to Change Post Address and for Extension of Time (Doc. 29), and Motion for Summary Judgment and Default Judgment (Doc. 31). The above referenced

motions will not be addressed herein as they are DENIED as MOOT as a result of the decision on Defendants' Motion to Dismiss (Doc. 10) which is hereby GRANTED.

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner.¹ See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). In this matter the magistrate judge served, by certified mail, the Report and Recommendation on May 15, 2008 to the address provided to the Court by Plaintiff. It appears that Plaintiff did not claim the certified mail. (See Doc. 32). However, per Fed. R. Civ. P. 5(b)(2)(C), service is complete upon mailing to the person's last known address. In addition, Plaintiff has been very active in this case, including filing a motion for summary judgment on June 2, 2008, the date the objections were due. Even though Plaintiff has failed to file objections within the time frame allotted, in the interest of justice, this Court will make a de novo review of the Magistrate Judge's Report and Recommendation.

Having reviewed this matter pursuant to 28 U.S.C. § 636, the Court finds the Magistrate Judge's Report and Recommendation to be correct. Plaintiff's complaint names Paula Y. Boggs and City of Cincinnati Prosecutor as the Defendants in this case. Although

¹When objections are received to a magistrate judge's Report and Recommendation on a dispositive matter, the assigned district judge "shall make a de novo determination...of any portion of the magistrate judge's disposition to which specific written objection has been made...." Fed. R. Civ. P. 72(b). After review, the district judge "may accept, reject or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions." *Id*; see also 28 U.S.C. 636(b)(1)(B). General objections are insufficient to preserve any issues for review; "[a] general objection to the entirety of the magistrate's report has the same effects as would a failure to object.

the claims alleged are difficult to determine from Plaintiff's complaint, it appears that he is alleging that the state criminal charges brought against him, solicitation and perjury, violate the U.S. Constitution and federal law (See Doc. 1, p5); that the attorney prosecuting his criminal case, Ms. Boggs, failed to respond to discovery requests from Plaintiff's criminal defense counsel (Doc. 1-2, p1); that he was subjected to double jeopardy and that this amounted to race discrimination (Doc. 1-2, p2). Plaintiff then appears to be asking this Court to suppress all the evidence in his state criminal proceeding arguing that the police entrapped him and that it was the police that violated the law by soliciting him (Doc. 1-2, p3-4). Finally, he argues that he was arrested without a warrant (Doc. 1-3, p1).

Defendants have moved to dismiss the complaint arguing that Plaintiff's claims against Ms. Boggs are barred by the doctrine of prosecutorial immunity and that the "City Prosecutor Office" is a department within a municipality and therefore does not have the capacity to be sued. Should the Plaintiff be intending to name the Prosecutor individually, and not the office, there are no allegations that he had any involvement in the claims alleged. The Court finds, as did the Magistrate Judge, that the Defendants' motion has merit. Ms. Boggs is entitled to absolute prosecutorial immunity. See *Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976). As to the other Defendant, City of Cincinnati Prosecutor, the Court also agrees with Defendants. If "City of Cincinnati Prosecutor" is the office of the Prosecutor such does not have the capacity to be sued as it is merely a department within a municipality. *Rhodes v. McDaniel*, 945 F.2d 117, 120 (6th Cir. 1991). If "City of Cincinnati Prosecutor" is the Prosecutor individually, Plaintiff has failed to state a claim for relief as to the Prosecutor as no allegations relate to him. See *Petty v. County of Franklin, Ohio*, 478 F.3d 341, 349 (6th Cir. 2007).

Accordingly, it is ORDERED that the Report and Recommendation of the Magistrate Judge is hereby ADOPTED. The Motion to Dismiss of Defendants (Doc. 10) is GRANTED. The remaining motions pending before the Court (Docs. 5, 12, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, and 31) are DENIED as MOOT and the Clerk of Court is directed to TERMINATE this matter from the docket of this Court.

IT IS SO ORDERED.

s/Michael R. Barrett
Michael R. Barrett, Judge
United States District Court